

1 WILLIAM M. CROSBY (SBN: 49357)  
13522 Newport Avenue, Suite 201  
2 Tustin, CA 92780  
Telephone: (714) 544-2493  
3 Facsimile: (714) 544-2497  
Email: wcrosby@wcrosbylaw.com

4 Attorney for Plaintiff  
5 NATALIE LAMBERT  
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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10  
11

12 NATALIE LAMBERT,  
13 Plaintiff,  
14

15 v.

16 UNIREGISTRY, INC., a Delaware  
corporation; SEVAN DERDERIAN;  
17 DOES I through X, inclusive,  
18 Defendants.  
19

)  
) CASE NO. 8:18-cv-01566-JLS (JDEx)  
)  
) **MEMORANDUM OF POINTS AND AUTHORITIES**  
) **AND ARGUMENT IN OPPOSITION TO**  
) **DEFENDANTS' MOTION FOR SUMMARY**  
) **JUDGMENT**

) [Filed and Served Concurrently with Plaintiff's  
) Statement of Genuine Issues in Response to  
) Defendants' Separate Statement of Alleged  
) Uncontroverted Facts and Conclusions of Law;  
) Declaration of Natalie Lambert in Opposition to  
) Defendants' Motion for Summary Judgment]

20 Date: November 15, 2019  
21 Time: 10:30 a.m.  
Ctrm: 10A

22 Plaintiff NATALIE LAMBERT ("plaintiff" and "Ms. Lambert") submits  
23 the following Memorandum of Points and Authorities and Argument in  
24 Opposition to the Motion for Summary Judgment filed by defendants  
25 Uniregistry, Inc. ("Uniregistry") and Sevan Derderian ("Derderian")  
26 (hereinafter collectively "defendants"):

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1 I. INTRODUCTION

2 This is a classic case of an administrative agency failing to  
3 fulfill adequately its statutory mandate to protect the consumer (in  
4 this case plaintiff Natalie Lambert) who reasonably relied on  
5 assurances by the EEOC that despite its previous improvident issuance  
6 of a "right-to-sue" letter shortly after filing her initial Charge,  
7 that it was continuing the investigate the claims of sexual harassment  
8 and retaliation against her previous employer. When plaintiff  
9 received the "Notice of Intent to Reconsider" by the District Director  
10 of the Los Angeles District Office of the EEOC, she had every reason  
11 to believe that the EEOC was following its own regulations and  
12 guidelines, and protecting her interest in securing legal recourse for  
13 holding her previous employer accountable and securing compensation  
14 for her substantial financial and emotional harm.

15 Defendants argue in support of this motion that regardless of the  
16 EEOC Director's reading of and reliance on applicable regulations  
17 warranting the opening of her case, that a Ninth Circuit case holding  
18 that the EEOC's failure to reopen the Charge within 90 days of the  
19 issuance of its previous right-to-sue letter fatally precludes  
20 plaintiff from asserting her civil claims in this action. Defendants'  
21 reliance on Lute v. Singer Co. (9th Cir. 1982) 678 F.2d 844, is  
22 misplaced given that it does not deal with the issue of "equitable  
23 tolling" at issue here. Plaintiff's case is distinguishable from  
24 Lute, in that the EEOC in Lute had investigated the plaintiff's claims  
25 for nearly two years prior to issuing its initial right-to-sue letter,  
26 while plaintiff herein had been assured from the time that the first  
27 right-to-sue letter had been issued that upon her providing additional  
28 evidence the investigation would continue. Because plaintiff relied on

1 the assurances of the EEOC from that time forward through the issuance  
2 of the "Notice of Intent to Reconsider" on May 25, 2017 and the  
3 issuance of the EEOC's subsequent right-to-sue letter on February 6,  
4 2018, the time within which she was required by law to file her civil  
5 lawsuit should be deemed to have been equitably tolled, such that for  
6 purposes of filing her FEHA claims she had an additional one year from  
7 the date of the issuance of the subsequent right-to-sue letter.  
8 Further, defendants have made an inadequate showing of prejudice to  
9 warrant precluding plaintiff from having her day in court based on a  
10 laches defense. For these reasons, defendants Motion for Summary  
11 Judgment should be denied.

## 12 II. STATEMENT OF FACTS

### 13 Ms. Lambert's Background and Employment by Uniregistry:

14 Ms. Lambert has a Bachelors Degree in Marketing and Management  
15 from Northwood University in West Palm Beach, Florida. Prior to her  
16 employment with Uniregistry, she was employed as Vice President of  
17 City Development for Castello Cities Internet Network for over seven  
18 years. Prior to working at Uniregistry and for approximately 3-1/2  
19 years since, she was never terminated from a job for performance or  
20 conduct related reasons. Ms. Lambert was employed at Uniregistry from  
21 October 28, 2014 to March 23, 2015 as Director of Business  
22 Development. (Lambert Dec., pars. 2, 3)

### 23 Ms. Lambert's Complaints Re Sexual Harassment By DerDerian, and 24 Uniregistry's Retaliatory Acts:

25 From the outset of her employment with Uniregistry and  
26 continuously thereafter, Ms. Lambert was subject to inappropriate and  
27 offensive treatment, which she contends was based on her gender, by  
28 her supervisor, Sevan Derderian, Vice President of Sales. This

1 harassment is described in the Complaint herein, as well as in Ms.  
2 Lambert's responses to Interrogatories and in her deposition.  
3 (Lambert Dec., par. 3)

4 On November 19, 2014, Ms. Lambert made a written complaint to the  
5 President of Uniregistry, Frank Schilling, regarding Mr. Derderian's  
6 conduct. Mr. Derderian treated her in an even more hostile manner  
7 thereafter. To her knowledge, no investigation or remedial action was  
8 taken regarding her written complaint. In December of 2014 and  
9 January of 2015, Ms. Lambert learned that over 21 fraudulent online  
10 credit applications were submitted in her name. In addition, she also  
11 experienced unwarranted changes to her work email password, and her  
12 access to Uniregistry's database was restricted. She told  
13 Uniregistry's General Counsel, as well as Francisco Obispo the IT  
14 Director, that she believed Mr. Derderian was responsible for the  
15 above discriminatory and retaliatory acts. Further, she was not  
16 provided special rates that were provided to the male sales  
17 executives. If she had been provided with these special rates, her  
18 sales would have increased. Due to these and other efforts, which Ms.  
19 Lambert believes were made deliberately to sabotage her sales, she was  
20 not able to increase her sales to the degree to which she believes  
21 would have been possible. Finally, she had been promised that she  
22 would be able to do outside sales, but after she was hired she was  
23 told that she had to stay in the office and call customers rather than  
24 go out in the field to meet with them. (Lambert Dec., par. 4)

25 **Ms. Lambert's Retaliatory Termination:**

26 For these reasons, Ms. Lambert was shocked and surprised to  
27 receive the email of March 6, 2015 from Bret Fausett, General Counsel,  
28 alleging that she had made insufficient sales. (Lambert Dec., par. 5)

1 Less than three weeks later, without any further counseling or  
2 specific sales goals ever having been provided, Ms. Lambert was told  
3 by Michael Ward, Operations Manager, that she was being terminated  
4 "because your numbers did not meet expectations." Ms. Lambert did not  
5 believe that she had been given close to sufficient time to build  
6 relationships or develop business, particularly after having been  
7 subject to abusive conduct by her boss and having been sabotaged in  
8 the performance of her duties. She had moved from Florida to  
9 California, shipped all of her belongings, and signed a one year  
10 lease. She was then forced to break her lease and pay to have her  
11 belongings shipped back to Florida. Ms. Lambert did not find full  
12 time employment again until March of 2017. Due to her resultant  
13 depression and anxiety, she received treatment from Alexis Brown,  
14 Psy.D. on a weekly basis in 2016 and 2017, and from Jan Ganesh, Psy.D.  
15 intermittently during that period. (Lambert Dec., par. 6)

16 **Ms. Lambert Timely Contacts the EEOC:**

17 Following her return to Florida in September of 2015, Ms. Lambert  
18 contacted the law firm of Scott Wagner & Associates regarding her  
19 possible claims. Based on the information provided by that law firm,  
20 she filed a Charge of Discrimination and Retaliation with the Los  
21 Angeles office of the EEOC on September 22, 2015. She included  
22 Uniregistry's Newport Beach address on her Charge. On September 28,  
23 2015, Ms. Lambert received an intake questionnaire from the EEOC  
24 stating in part: "We have also notified the employer that you are  
25 filing a charge, which we are required to do." Ms. Lambert believes  
26 that Mr. Derderian was still employed at the Newport Beach office of  
27 Uniregistry at this time. On January 19, 2016, the EEOC filed a  
28 Charge of Discrimination and Retaliation. The EEOC's Charge did not



1 include as a defendant, Sevan Derderian, even though Ms. Lambert had  
 2 listed his name three times in her Charge as the person who had abused  
 3 and sexually harassed her. On the same date Ms. Lambert's Charge was  
 4 dual filed with the DFEH, she did not ask either the EEOC or the DFEH  
 5 to issue an immediate right-to-sue letter. However she received a  
 6 "right-to-sue" letter from the DFEH dated January 19, 2016 which  
 7 stated: "Pursuant to Government Code section 12965, subdivision  
 8 (d)(1), this one-year period will be tolled during the pendency of the  
 9 EEOC's investigation of the complaint." She therefore expected the  
 10 EEOC to perform an investigation, and was assured of this when she  
 11 reviewed a letter dated February 1, 2016 from the EEOC that stated:  
 12 "Pursuant to the worksharing agreement, this charge is to be initially  
 13 investigated by the EEOC." (Lambert Dec., par. 7; Exs. A-E)

14 **The EEOC Improvidently Issues Its Initial Right-to-Sue Letter:**

15 Ms. Lambert was then surprised to receive a "right-to-sue" letter  
 16 from the EEOC dated the same day - February 1, 2016. She did not  
 17 understand how they could have conducted a thorough investigation in  
 18 less than two weeks. No one from the EEOC had contacted her to  
 19 interview her further, or advise as to the status of the  
 20 investigation. (Lambert Dec., par. 8; Ex. F)

21 **The EEOC Continues Its Investigation of Plaintiff's Claims:**

22 In a telephone conversation on February 24, 2016, Ms. Lambert was  
 23 told by John Sohn, EEOC Manager, that if she provided evidence they  
 24 would reevaluate her case and investigate it. Thereafter she sent a  
 25 number of documents supporting her claims to Mr. Sohn at the EEOC. On  
 26 April 13, 2016, Brandon Mancina, an EEOC Investigator, told Ms.  
 27 Lambert that "these investigations take a long time" and that she  
 28 should "continue to follow up regarding the status of the

1 investigation," and to let him know if she had additional evidence.  
2 (Lambert Dec., par. 9; Ex. G)

3 From May of 2016 through March 10, 2017, Ms. Lambert had periodic  
4 conversations with EEOC employees, including Saul Vasquez, who she  
5 believes was an Investigator, and Patricia Kane, an EEOC Enforcement  
6 Officer. On March 3, 2017 and March 10, 2017, Ms. Kane assured Ms.  
7 Lambert that her right-to-sue letter was being re-evaluated and  
8 investigated and to let her know if she had additional evidence. Ms.  
9 Kane also told Ms. Lambert that she had a good legal argument.  
10 (Lambert Dec., par. 10)

11 Ms. Lambert's belief that she had additional time to file a civil  
12 lawsuit was also based on advice by her counsel at Scott Wagner &  
13 Associates, that given these assurances by the EEOC she would in fact  
14 have additional time. (Lambert Dec., par. 11)

15 Ms. Lambert was unaware of whether or not the Charges and right-  
16 to-sue letters previously issued by the EEOC and the DFEH had in fact  
17 been sent to Uniregistry or Mr. Derderian. On March 23, 2017, her  
18 counsel at Scott Wagner & Associates sent a letter to Uniregistry  
19 outlining her claims. This was sent in the belief that since the EEOC  
20 had assured Ms. Lambert that it would need additional time to complete  
21 its investigation and issue a subsequent right-to-sue letter that  
22 there was ample time left in which to file a civil lawsuit. (Lambert  
23 Dec., par. 12)

24 On March 23, 2017, Ms. Lambert's attorney Lindsey Wagner sent a  
25 letter to Patricia Kane, the EEOC Enforcement Officer, advising that  
26 Scott Wagner & Associates would be representing her in further  
27 communications with the EEOC. On March 31, 2017 Ms. Wagner sent a  
28 further letter to Ms. Kane with additional documents supporting Ms.

1 Lambert's claims. (Lambert Dec., par. 13; Exs. H, I)

2 **The EEOC Issues a "Notice of Intent to Reconsider":**

3 Ms. Lambert received a letter dated May 25, 2017 from Rosa M.  
4 Viramontes, District Director of the Los Angeles District Office of  
5 the EEOC, advising of the "Notice of Intent to Reconsider" pursuant to  
6 29 CFR 1601.21. Ms. Lambert was surprised to learn that there had  
7 been a Dismissal of the Right-To-Sue on February 1, 2016. Not only  
8 had she not been advised of this, but as stated above, Ms. Lambert had  
9 been reassured repeatedly that the investigation was ongoing based on  
10 her original Charge. (Lambert Dec., par. 14; Ex. J)

11 A series of emails dated from July 18, 2017 through January 23,  
12 2018 between Jacqueline Escobar, EEOC Investigator, and Lorraine  
13 Ocheltree, Uniregistry's counsel, reflect a very substantial delay in  
14 Uniregistry's response to the EEOC's request for information. After  
15 attempting to arrange interviews with three witnesses on July 18,  
16 2017, it was not until January 23, 2018 that a single affidavit  
17 apparently was obtained by Vern Jurovich, which he apparently declined  
18 to sign. These emails, which Ms. Lambert obtained through the FOIA,  
19 appear to reflect a lack of cooperation by Uniregistry and a  
20 questionable basis for the EEOC closing its investigation (with only  
21 one unsigned affidavit). (Lambert Dec., par. 15; Ex. K)

22 **The EEOC's Subsequent Right-To-Sue Letter:**

23 On February 6, 2018, the EEOC issued its subsequent right-to-sue  
24 letter. Because Ms. Lambert was living in Boynton Beach, Florida and  
25 needed to find an attorney who would file a civil lawsuit for her in  
26 Southern California, it took her some time to locate such an attorney.  
27 She contacted William M. Crosby in July of 2018 and filed her civil  
28 lawsuit alleging claims under the Fair Employment and Housing Act for

1 Sexual Harassment (Gov. Code, § 12940(j)) and Retaliation (Gov. Code,  
 2 § (h)) on July 24, 2018. After prompt service of the Complaint on  
 3 defendants Uniregistry, Inc. and Derderian, the action was removed to  
 4 the United States District Court, Central District of California,  
 5 based on diversity of citizenship on September 4, 2018. (Lambert  
 6 Dec., par. 16; Ex. L)

7 Ms. Lambert at all times believed that she had filed her Charge  
 8 with the EEOC as required by law, and that the EEOC had complied with  
 9 its obligations to conduct an investigation pursuant to its statutory  
 10 authority. The repeated assurances to Ms. Lambert by the EEOC's  
 11 agents as indicated above reinforced her belief in that regard. At no  
 12 time has she willfully attempted to delay any investigation or the  
 13 filing of this action, and her counsel has complied with all  
 14 applicable deadlines required by the District Court in the prosecution  
 15 of Ms. Lambert's civil lawsuit. Ms. Lambert very much wants to have  
 16 her day in court as a result of the great financial and emotional harm  
 17 caused her by defendants, and she wants the defendants to be held  
 18 accountable for their wrongful conduct. (Lambert Dec., par. 17)

### 19 III. ARGUMENT

#### 20 A. APPLICABLE STANDARDS IN RULING ON MOTION FOR SUMMARY 21 JUDGMENT.

22 Rule 56 is to be construed "with due regard for the rights of  
 23 persons asserting claims and defenses that are adequately based in  
 24 fact to have those claims and defenses tried to a jury." Celotex  
 25 Corp. v. Catrett (1986) 477 U.S. 317, 106 S.Ct. 2548. Summary  
 26 judgment is a drastic remedy and it is to be granted cautiously:  
 27 "Neither do we suggest that the trial court should act other than with  
 28 caution in granting summary judgment." Anderson v. Liberty Lobby,

1 Inc. (1986) 477 U.S. 242, 106 S.Ct. 2505. "All reasonable inferences  
 2 must be drawn in the opposing party's favor . . . . At the summary  
 3 judgment stage, the non movant's version of any disputed issue of fact  
 4 is presumed correct." Eastman Kodak Co. v. Image Technical Services,  
 5 Inc. (1992) 504 U.S. 451, 112 S.Ct. 2072. "Even where the basic facts  
 6 are undisputed, if reasonable minds could differ on the inferences to  
 7 be drawn from those facts, summary judgment should be denied." Lake  
 8 Nacimiaento Ranch Co. v. San Luis Obispo County (9<sup>th</sup> Cir. 1987) 841  
 9 F.2d 872. Further, where an employer's state of mind or motivation is  
 10 in issue, a genuine issue exists precluding summary judgment. Sischo-  
 11 Nownejad v Merced Comm. College Dist. (9<sup>th</sup> Cir. 1991) 934 F.2d 1104.

12 The Court should draw all reasonable inferences in favor of the  
 13 non moving party, without making credibility determinations or  
 14 weighing any evidence. Matsushita Elec. Industrial Co. v. Zenith  
 15 Radio Corp. (1986) 475 U.S. 574; Anderson v. Liberty Lobby, Inc.  
 16 (1986) 477 U.S. 242.

17 **B. GENUINE ISSUES OF FACT EXIST REGARDING WHETHER PLAINTIFF'S**  
 18 **CLAIMS ARE NOT TIME-BARRED DUE TO EQUITABLE TOLLING.**

19 Citing inapposite authorities, defendants argue that because the  
 20 "Notice of Intent to Reconsider" did not take place within 90 days of  
 21 the issuance of the initial "right-to-sue" letter issued by the EEOC,  
 22 or even within one year - the time period in which a civil action  
 23 under FEHA can be filed under the "work sharing" agreement - that the  
 24 EEOC's second right-to-sue letter issued on February 6, 2018 was  
 25 issued too late, thereby depriving this court of jurisdiction for  
 26 plaintiff's otherwise timely filed FEHA claims. Citing Lute v. Singer  
 27 Co. (Ibid) and two cases in the 5th and 10th Circuits Courts of Appeal  
 28 citing Lute, defendants claim that the EEOC exceeded its authority by

1 issuing a second right-to-sue notice more than 90 days following the  
2 issuance of the initial right-to-sue notice on February 1, 2016.  
3 (Defendants' Brief, p. 17:11-15)

4 In Lute v. Singer Co. (Ibid), the EEOC had issued its initial  
5 right-to-sue letter on May 5, 1978, one year and five months after  
6 opening its investigation in October of 1976. The second right-to-sue  
7 letter issued on January 21, 1980, over 19 months after the issuance  
8 of the initial right-to-sue letter. The Lute court in reversing the  
9 trial court's allowing the second right-to-sue letter while noting the  
10 authority of the EEOC to reconsider a case and change its original  
11 decision stated, ". . . by limiting the time in which the EEOC may  
12 rescind a Notice of Right to Sue to the 90-day period in which suit  
13 may be brought, Trujillo and Gonzalez protect both defendant's and  
14 plaintiff's interest in speedy resolution of Title VII complaints  
15 without unduly restricting the EEOC's ability to address its own  
16 errors." Id. at p. 846. The cases cited, Trujillo v. General  
17 Electric Co. (10th Cir. 1980) 621 F.2d 1084 and Gonzalez v. Firestone  
18 Tire Rubber Co. (5th Cir. 1980) 610 F.2d 241, involved cases in which  
19 a full investigation was conducted by the EEOC. In Trujillo, the  
20 plaintiff filed his initial Charge of Discrimination on June 2, 1976.  
21 The right-to-sue letter issued six months later on December 2, 1976.  
22 The Court held that the District Director's decision to reconsider his  
23 earlier determination of no-cause on January 24, 1977 was within the  
24 90 days within which he would otherwise have been able to bring a  
25 claim under the original EEOC right-to-sue letter.

26 Similarly in Gonzalez, the plaintiff filed a Charge of  
27 Discrimination in September of 1973. A no-cause determination was  
28 issued on March 20, 1974, approximately seven months later. Forty one



1 days later, the EEOC issued a Notice of Reconsideration. In both  
2 causes, as in Lute, a presumably adequate investigation had been  
3 conducted by the EEOC over a period of many months, prior to the  
4 issuance of the initial right-to-sue letter. In none of these three  
5 cases was the doctrine of "equitable tolling" applied.<sup>1</sup> That doctrine,  
6 requiring that strict limitation periods be tolled for equitable  
7 reasons, was described in Downs v. Department of Water & Power (1997)  
8 58 Cal.App.4th 1097. In Downs, the plaintiff had filed a Charge of  
9 racial discrimination and harassment with the EEOC on March 15, 1993.  
10 A copy was sent to the DFEH under their work sharing agreement. The  
11 EEOC advised the plaintiff that the DFEH would not be issuing an  
12 accusation and that he had one year to file an action under the Fair  
13 Employment and Housing Act pursuant to Government Code, § 12965(b).  
14 A right-to-sue letter issued to the plaintiff on September 29, 1995.  
15 Three months later the plaintiff filed a complaint for violations of  
16 FEHA. The trial court dismissed the action for failing to file within  
17 the one year period. The appellate court reversed, citing the  
18 equitable tolling doctrine. In discussing this doctrine, the Court  
19 stated that it "evolved in the 1970's to toll statutes of limitations  
20 when defendants would not be prejudiced and plaintiffs, who had  
21 several legal remedies, pursued one such remedy reasonably and in good  
22 faith."

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26  
27 <sup>1</sup>Plaintiff does not raise the "continuing violation" doctrine as a basis for asserting the timeliness of  
28 her civil action. Defendants are mistaken in their assertion that plaintiff relies on this theory as stated at p.  
22:3-5 of their brief. Rather, plaintiff relies on the "equitable tolling" doctrine as discussed herein.

1 In Collier v. City of Pasadena (1983) 142 Cal.App.3d 917, 922-  
2 923, the Court noted:

3 "Three factors determine whether the statute of limitation  
4 is equitably tolled in a particular case: (1) timely notice  
5 to defendants in filing the first claim; (2) lack of  
6 prejudice to defendants in gathering evidence to defend  
7 against the second claim; and (3) good faith and reasonable  
8 conduct by plaintiffs in filing the second claim." Id. at p.  
9 1101.

10 The Downs court further noted that the doctrine "serves the  
11 fundamental purpose of the statutes of limitations by providing timely  
12 notice of claims to defendants, without imposing the costs of  
13 forfeiture on plaintiffs. (Citations) Second, it avoids the hardship  
14 of compelling the plaintiffs to pursue several duplicative actions  
15 simultaneously on the same set of facts. (Citation) Third, it  
16 lessens the costs incurred by courts and other dispute resolution  
17 tribunals because disposition of a case filed in one forum may render  
18 proceedings in the second unnecessary or easier and less expensive to  
19 resolve." (Id. at p. 1101)

20 Plaintiff had requested that the EEOC do a full investigation  
21 into her claims when she made her initial Charge on September 22,  
22 2015. The issuance of the EEOC's first right-to-sue letter on  
23 February 1, 2016 was without any adequate investigation. When  
24 plaintiff questioned why the right-to-sue letter had issued, she was  
25 told that if she provided evidence the EEOC would reevaluate her case  
26 and investigate it. Plaintiff then sent a number of documents  
27 supporting her claims to the EEOC. (Lambert Dec., pars. 8, 9; Ex. G)  
28 She was reassured on multiple occasions by communications with the  
EEOC's Investigators and agents that the investigation would continue  
through the spring and summer of 2017, and that her right-to-sue  
letter was being re-evaluated. (Lambert Dec., pars. 9 and 10) This



1 was also confirmed through communications by her employment lawyer  
2 that she retained to communicate on her behalf with the EEOC.  
3 (Lambert Dec., pars. 11 and 13; Exs. H, I)

4 On May 25, 2017, the District Director of the Los Angeles  
5 District Office of the EEOC issued a "Notice of Intent to Reconsider"  
6 pursuant to 29 CFR 1601.21. (Lambert Dec., par. 14; Ex. J) This  
7 states in part:

8 "In no circumstances where the notice of right to sue has  
9 been revoked, the issuing Director will, in accordance with  
10 § 1601.28, issue a notice of right to sue anew which will  
provide the charging party with 90 days within which to  
bring suit."

11 Defendants, by their counsel, in communications with the EEOC  
12 from July 18, 2017 through January 23, 2018 caused further delay in  
13 the proceedings, and produced only one (unsigned) affidavit by a  
14 Uniregistry employee. (Lambert Dec., par. 15; Ex. K) When efforts at  
15 conciliation failed, the EEOC issued a subsequent right-to-sue letter  
16 to plaintiff on February 6, 2018. (Lambert Dec., par. 16; Ex. L) The  
17 present civil lawsuit was timely filed following the issuance of this  
18 right-to-sue letter on July 24, 2018.

19 The present civil lawsuit is more akin to Mitchell v. State  
20 Department of Public Health (2016) 2 Cal.App.5th 303. In Mitchell,  
21 the Court held that the plaintiff's complaint was timely filed even  
22 though it was filed nearly three years after the DFEH issued its  
23 initial "right-to-sue" letter. This had been issued at the same time  
24 the plaintiff filed a discrimination charge with the EEOC. More than  
25 two years after the DFEH issued its "right-to-sue" letter, the EEOC  
26 issued a letter of determination stating there was "reasonable cause"  
27 to believe Mitchell had suffered discrimination. A "right-to-sue"  
28 notice was then issued by the EEOC on March 21, 2014 and suit was

1 filed on July 8, 2014, three years after the initial right-to-sue  
2 letter issued. Citing Government Code, § 12965(d) as being "intended  
3 to codify the holding in Downs (*supra*) . . . ." Id. at p. 312. The  
4 Court also noted: "The complaint alleges sufficient facts to plead the  
5 third requirement of equitable tolling - reasonable and good faith  
6 conduct by the plaintiff. In this regard the 'FEHA itself requires  
7 that we interpret its terms liberally in order to accomplish the  
8 stated legislative purpose (Gov. Code, § 12993(a) . . . .) In order  
9 to carry out the purpose of FEHA to safeguard the employee's right to  
10 hold employment without experiencing discrimination, the limitations  
11 period set out in the FEHA should be interpreted so as to promote the  
12 resolution of potentially meritorious claims on the merits.'"

13 Similarly here, plaintiff received notice soon after she received  
14 her initial right-to-sue letter from the DFEH that the one year period  
15 for filing a FEHA claim would be tolled during the pendency of the  
16 EEOC's investigation. Just as the Court found in Mitchell v. State  
17 Department of Public Health (Ibid) that the statute of limitations was  
18 equitably tolled until the EEOC issued its letter of determination  
19 nearly three years after the DFEH issued its first right-to-sue  
20 letter, so under the facts of this case, equitable tolling similarly  
21 applies. Plaintiff had been expressly told and reassured on multiple  
22 occasions by the EEOC's Investigators and agents that her  
23 investigation was ongoing after the issuance of the EEOC's first  
24 right-to-sue letter on February 1, 2016.

25 Defendants will likely argue that the first and second elements  
26 are insufficient to justify this doctrine. Defendants claim that they  
27 did not receive notice of the Charges until they received the letter  
28 from plaintiff's counsel in March of 2017. Yet it strains credulity

1 that defendants would not have received notice when plaintiff provided  
2 Uniregistry's Newport Beach address to the EEOC when she filed her  
3 initial Charge, and the EEOC had advised plaintiff in its September  
4 28, 2015 intake questionnaire that they had "notified the employer  
5 that you are filing a charge, which we are required to do." (Lambert  
6 Dec., par. 7; Exs. A, B) Any blame attributable to the delay in  
7 notice to defendants of plaintiff's claims cannot be attributable to  
8 plaintiff, as she had provided the EEOC with Uniregistry's business  
9 address when she timely filed her initial Charge on September 22,  
10 2015.

11 The cases cited by defendants in support of their argument based  
12 on laches are inapposite. In Boone v. Mechanical Specialties Co. (9th  
13 Cir. 1979) 609 F.2d 956, the plaintiff's case was pending before the  
14 EEOC for almost seven years before requesting and receiving a right-  
15 to-sue letter, and then the plaintiff waited an additional four and a  
16 half months before filing a civil action. The plaintiff had rejected  
17 numerous offers by the EEOC to issue right-to-sue letters. Only 16 of  
18 the 51 employees that the plaintiff named as possible witnesses were  
19 still employed by the company. The Court's dismissal was based on its  
20 findings that the plaintiff's delay was unreasonable and inexcusable.

21 In Albemarle Paper Co. v. Moody (1975) 422 U.S. 405, a class  
22 action seeking injunctive relief against discriminatory plant policies  
23 and practices, the Supreme Court properly affirmed a dismissal of a  
24 motion to add a claim for back pay filed five years after the filing  
25 of the complaint. The Supreme Court held that whether the  
26 respondents' tardiness and inconsistency in making their back pay  
27 demands were excusable and actually prejudiced petitioners were  
28 matters that would be open to review by the Court of Appeals in the

1 event the District Court, on remand, decided to decline a back pay  
2 award. Id. at pp. 423-425. In the present case, on the other hand,  
3 plaintiff and her counsel had been led to believe by the EEOC that  
4 despite the hastily issued right-to-sue letter soon after the filing  
5 of plaintiff's initial Charge, that based on additional evidence  
6 provided by plaintiff that the EEOC was continuing to investigate her  
7 charges. (Lambert Dec., pars. 9, 10; Ex. G) Also, a very substantial  
8 delay of the investigation, from July 18, 2017 through January 23,  
9 2018, can be attributed primarily to defense counsel's delays in  
10 responding to the EEOC's requests for information, and the attempts by  
11 defense counsel to take extensions of time to respond to the EEOC's  
12 inquiries. (Lambert Dec., par. 15, Ex. K; Ocheltree Dec., pars. 3-9,  
13 Exs. B-E) Further, because plaintiff was living in Boynton Beach,  
14 Florida at the time the subsequent right-to-sue letter was issued by  
15 the EEOC on February 6, 2018, she needed to find an attorney who would  
16 file a civil lawsuit for her in Southern California. It took her some  
17 time to locate such an attorney. Plaintiff found her current  
18 attorney, William M. Crosby, in July of 2018 and filed her civil  
19 lawsuit on July 24, 2018.

20 Regarding the alleged prejudice to defendants due to the absence  
21 of key witnesses, there are only two witnesses referenced in  
22 defendants' brief who allegedly are not available, Manu Lanctot and  
23 Michael Ward. Mr. Lanctot, who is now deceased, was an employee in  
24 the IT Department and would have been able to corroborate plaintiff's  
25 complaints regarding the unwarranted changes to her work email  
26 password. Regarding Mr. Ward, the Director of Operations, according  
27 to plaintiff he saw Mr. Derderian treat her abusively and was aware of  
28 her complaints regarding the unwarranted changes to her work email

1 password, as well as her access to the company database being  
2 restricted. Also, Mr. Ward was the one who terminated plaintiff. In  
3 both cases, it is plaintiff who will arguably be most prejudiced by  
4 their absence, as they would have presumably corroborated her  
5 complaints. Further, plaintiff's attorney will be unable to cross-  
6 examine Mr. Ward regarding the reasons for her termination. (Lambert  
7 Dec., par. 18)

8 Defendants next argue that because defendant Derderian was not  
9 named as a respondent in the EEOC or DFEH Charges, the "right-to-sue"  
10 letters cannot apply to defendant Derderian. Defendants cite to  
11 authority that a party not named in an administrative charge issued by  
12 the EEOC or DFEH may not be named in a civil action asserting a FEHA  
13 claim, citing Okoli v. Lockheed Technical Operations Co. (1995) 36  
14 Cal.App.4th 1607 and Valdez v. City of Los Angeles (1991) 231  
15 Cal.App.3d 1043 in support of this proposition. In Okoli, the issue  
16 raised on appeal pertained to the failure of the appellant to allege  
17 a claim of retaliation which had occurred after the filing of a DFEH  
18 charge. The Court held that since the EEOC could not have had the  
19 opportunity to investigate and conciliate events occurring subsequent  
20 to the initial filing, that his retaliation claim could not be deemed  
21 sufficiently reasonably related to the DFEH claim he filed to allow it  
22 to be pursued. In Valdez, the Court noted that the individual  
23 defendants had not been named in the Charge of Discrimination filed  
24 through the DFEH, and that individuals are not liable in a claim of  
25 discrimination. In the present case, on the other hand, in her  
26 initial Charge to the EEOC plaintiff alleged that defendant Derderian  
27 had sexually harassed her. In her September 22, 2015 Charge to the  
28 EEOC plaintiff stated: "During my employment . . . I was . . .

1 harassed . . . on a daily basis by Sevan Derderian and several other  
2 employees in the office which were all male . . . . The harassment  
3 continued and escalated . . . ." (Lambert Dec., Ex. A)

4 In Martin v. Fisher (1992) 11 Cal.App.4th 118, the Court held  
5 that it was not necessary for a plaintiff to name a defendant in the  
6 caption of a DFEH administrative charge, stating: "We conclude that  
7 since respondent was named in the body of the administrative charge  
8 and participated in the administrative investigation, the trial court  
9 erred in dismissing appellant's claims against him for failure to  
10 exhaust administrative remedies." Id. at p. 123.

11 In the present case, although defendant Derderian is not  
12 identified as a named party in the caption of the EEOC or DFEH charge,  
13 the body of both charges are replete with reference to defendant  
14 Derderian. In the September 22, 2015 Charge, for example, it states  
15 that "since hired I have been constantly harassed by Sevan Derderian  
16 ('Sevan') in that he often prevented me from doing my job, and I was  
17 told by Sevan that I should put a pic of me in my email because I was  
18 hot and that it would help me get business . . . . Subsequently Sevan  
19 found out and threatened me by telling me he was going to make my job  
20 very difficult . . . ." (Lambert Dec., Ex. A) This was the operative  
21 Charge to which the "right-to-sue" letter was issued by the EEOC on  
22 February 6, 2018. (Lambert Dec., Ex. L)

23 In Oubichon v. North American Rockwell Corp. (9th Cir. 1973) 482  
24 F.2d 569, the Ninth Circuit held that "(w)hen an employee seeks  
25 judicial relief for incidents not listed in his original charge to the  
26 (EEOC) the judicial complaint nevertheless may encompass any  
27 discrimination like or reasonably related to the allegations of the  
28 EEOC charge . . . ." Id. at p. 571. See also Sanchez v. Standard



1 Brands, Inc. (5th Cir. 1970) 431 F.2d 455, in which the Court held  
2 that the scope of a civil complaint is limited not by the EEOC charge,  
3 but rather by "the scope of the EEOC investigation which can  
4 reasonably be expected to grow out of the charge of discrimination."  
5 Id. at p. 466.

6 Defendants rely on the dubious assertion that they were not on  
7 notice of any of plaintiff's claims until receipt of plaintiff's  
8 attorney's letter of March 23, 2017, and that defendant Derderian  
9 himself did not learn of any possible claims until he was served with  
10 this civil lawsuit. These assertions by defendants are highly  
11 questionable. In plaintiff's initial Charge of Discrimination and  
12 Retaliation that she filed with the EEOC on September 22, 2015, she  
13 listed Uniregistry's Newport Beach, California address. (Lambert  
14 Dec., par. 7, Ex. A) On September 28, 2015, plaintiff received an  
15 intake questionnaire from the EEOC stating in part: "We have also  
16 notified the employer that you are filing a charge, which we are  
17 required to do." (Lambert Dec., par. 7, Ex. B) Plaintiff was aware  
18 that defendant Derderian was still employed at the Newport Beach  
19 office of Uniregistry at this time. The EEOC's January 19, 2016  
20 Charge of Discrimination and Retaliation also listed Uniregistry's  
21 Newport Beach, California address. (Lambert Dec., par. 7, Ex. C) The  
22 Ninth Circuit recognizes the "Mailbox Rule," whereby "proper and  
23 timely mailing of a document raises a rebuttable presumption that it  
24 is received by the addressee." Mahon v. Credit Bureau of Placer  
25 County Inc. (9th Cir. 1999) 171 F.3d 1197.


26 Finally, laches is an equitable defense, which has been held to  
27 apply only to injunctive or other equitable claims. The Rutter Group  
28 California Practice Guide, *Employment Litigation* [16:560]. And

1 assuming arguendo that the defense applies, for the foregoing reasons  
2 defendants will be unable to prove lack of diligence by plaintiff in  
3 pursuing her claims - a necessary element of the defense. National  
4 Railroad Passenger Corp. v. Morgan (2002) 536 U.S. 101, 122.

5 **IV. CONCLUSION**

6 As demonstrated above, this is not a case in which the lengthy  
7 delay of filing this civil action was attributable to plaintiff's lack  
8 of diligence in pursuing her claims. Rather, she relied in good faith  
9 on representations and assurances by the EEOC representatives, and  
10 even the District Director of the Los Angeles District Office of the  
11 EEOC, regarding its pursuit of an ongoing investigation and the  
12 timeliness of the issuance of the subsequent February 6, 2018 "right-  
13 to-sue" letter. Moreover, defendants have made an inadequate showing  
14 of prejudice, even assuming a laches defense was otherwise applicable.  
15 Insufficient grounds have been established to warrant the denial of  
16 plaintiff's right to a jury trial as to her claims.

17  
18 Dated: October 24, 2019

  
19 WILLIAM M. CROSBY  
20 Attorney for Plaintiff  
21 NATALIE LAMBERT  
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